

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Croft, 2013 NSPC 100

Date: August 27, 2013

Docket: 2297044, 2297048

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Jason Michael Croft

Sentence Hearing

Judge: The Honourable Judge Theodore K. Tax, J.P.C.

Oral Decision: August 27, 2013

Charges: CC. 266, CC. 92(2)

Counsel: Alicia Kennedy, for the Crown
Jill Lacey, for the Defence

By The Court (Orally):

Introduction

[1] Mr. Jason Croft has entered guilty pleas to the assault of Mr. Paul Hearn contrary to section 266 of the **Criminal Code** and to possession of a prohibited weapon (a sawed-off rifle) contrary to section 92(2) of the **Criminal Code**. These offences occurred in Sackville, Nova Scotia on March 29, 2011. The guilty pleas to these two charges were entered on the scheduled trial date, which in this case, was January 8, 2013. The Crown elected to proceed summarily on the charge of assault contrary to section 266 of the **Criminal Code**. The charge of unlawful possession of a prohibited weapon (a sawed-off rifle) contrary to section 92(2) of the **Criminal Code** is an indictable offence and in the case of a first offence for possession of a prohibited weapon, the offender is liable to a term of imprisonment not exceeding 10 years, but is not subject to a minimum term of imprisonment.

[2] Following the guilty pleas, the Court requested that a Pre-Sentence Report be prepared for a sentencing hearing on March 21, 2013. That hearing was adjourned and rescheduled for May 27, 2013 to allow time for Counsel to prepare written submissions. On May 27th, 2013, the sentencing hearing was further adjourned to July 30, 2013 as a dispute arose between the Crown and the Defence with respect to the circumstances of the offences which would be related to the Court. In the interim, the dispute over the facts to be related to the Court was essentially resolved by Counsel and the sentencing hearing and submissions of Counsel were made on July 30, 2013. The Court reserved its decision until today's date.

[3] The issue for the Court is to determine a fit and proper sentence taking into account all of the relevant purposes and principles of sentencing, the circumstances of the offence and the particular circumstances of the offender, Mr. Croft.

Circumstance of the Offences:

[4] On March 29, 2011, the victim, Mr. Hearn, who is a resident of Digby County, was visiting in the Halifax Regional Municipality. Mr. Hearn and Mr. Croft knew each other, as the victim is the cousin of Nicole Pearl, who is Mr. Croft's common-law partner. Mr. Hearn had stayed, on earlier occasions with his cousin and Mr. Croft. That morning, Mr. Hearn had sent several text messages to Ms. Pearl's I-phone. Mr. Croft read them and sent Mr. Hearn back a message that he was looking for him. Mr. Croft believed that Paul Hearn was stalking his family and rather than contacting the police and having them intervene in this situation, he took matters into his own hands.

[5] Around 7:30 AM on March 29, 2011, Mr. Croft got in his car and drove to the end of the street where he found Mr. Hearn's car parked in a gravel pit which was located at the end of their street. Mr. Croft, believing that there was no legitimate reason for Mr. Hearn to be in that location at that time of the day, got out of his car and went straight over to Mr. Hearn's car. As Mr. Croft approached Mr. Hearn's car, the victim got out of his vehicle and, at that point, Mr. Croft pushed him back against the car and began hitting Mr. Hearn in the head with his hand. Mr. Croft was wearing a large ring on his finger which caused a cut to Mr. Hearn's forehead. During the assault of Mr. Hearn, Mr. Croft told him to get out of town and to stay away from his family. There is some dispute as to the length of the assault, however, for the purposes of this sentencing decision, I find that the

assault was relatively brief and that Mr. Croft struck the victim four or five times during the assault. There were no significant injuries from the assault.

[6] Based upon the information provided to the police by the victim, police officers obtained a search warrant and executed that warrant at Mr. Croft's residence in Sackville, Nova Scotia. As a result of that search, police officers located a Lakefield Mark II bolt action .22 calibre rifle with a sawed-off barrel and stock, behind an access panel near the hot water tank which was in the closet of the main bedroom of the house. The firearm was certified to be a prohibited firearm which was in working order, but was not readily accessible as it was behind an access panel which was secured to the wall by several screws. The police had to remove the screws to the access panel in order to locate the sawed-off rifle. Mr. Croft did not have a license to possess that firearm and the firearm was not registered. Although the firearm was not properly secured, it was not loaded and there was no ammunition located in the residence.

Victim Impact Statement:

[7] The victim, Mr. Paul Hearn, was present in court on the scheduled date for the trial. Shortly after Mr. Croft entered guilty pleas to the two charges, the Crown Attorney advised the court that Mr. Hearn confirmed that he did not wish to file a Victim Impact Statement or to address the court at sentencing.

Submissions of Counsel:

[8] The Crown Attorney acknowledges that, when this offence occurred, the wording of section 742.1 of the **Code** permitted the option of the court imposing a Conditional Sentence Order of imprisonment. The Crown also notes that they proceeded summarily on the assault charge and that there is no minimum sentence prescribed by section 92 of the **Criminal Code** in this case, because the offender

does not have any prior convictions. However, after considering relevant cases which were referred to in their brief, the Crown recommends a six-month custodial sentence followed by two years under terms of probation, a 10 year weapons prohibition pursuant to section 109 of the **Criminal Code** and the forfeiture of the sawed-off rifle pursuant to section 491 of the **Criminal Code**. The Crown also asked the court to exercise its discretion and order Mr. Croft to provide a DNA sample as sections 266 and 92(2) of the **Criminal Code** are secondary designated offences. It is the position of the Crown that, in the circumstances of this offence, there is a requirement to stress specific and general deterrence as well as denunciation of the unlawful conduct and that a Conditional Sentence Order does not adequately address those purposes of sentencing in this case.

[9] Defence counsel submits that all of the criteria for the imposition of a Conditional Sentence Order under section 742.1 of the **Criminal Code** are met in this case as the Crown, through their submissions, does not seek a sentence of imprisonment in excess of two years. It is the position of the Defence that, since there is no minimum term of imprisonment for a first conviction of possession of a prohibited weapon contrary to section 92(2) of the **Criminal Code**, and this is not a “serious personal injury offence,” the Conditional Sentence Order is both an available and appropriate sanction in all the circumstances of this case. Defence counsel points to a positive presentence report, support of the family and his employer as well as the other mitigating factors in this case.

[10] Defence counsel also notes that Mr. Croft has been under court-ordered conditions of release for over two years without incident and has demonstrated his ability to comply with court-imposed conditions. In all the circumstances of this case, Defence Counsel submits that Mr. Croft does not need to be separated from society to denounce his unlawful conduct and that an appropriate range of sentence

would be to order a conditional sentence of imprisonment of 12 months followed by a period of probation. The Defence does not take issue with the ancillary orders requested by the Crown Attorney.

Circumstances of the Offender:

[11] Mr. Croft was 25 years old at the time of this offence and is now 28 years old. The Pre-Sentence Report indicates that he was raised by a single mother and suffered mental abuse at the hands of his mother's boyfriends. At age 12, he moved in with his grandparents and although he moved out of their house and has lived on his own since age 15, he maintains a positive relationship with them. Mr. Croft has been in a seven year relationship with his common-law partner [Nicole Pearl] and they share a four-year-old autistic son who has special needs.

[12] Mr. Croft completed his grade 9 education. He has been working as a laborer at a hardware store for the last two years. Prior to that, he primarily stayed at home with his son, but during that time, he did work as a yardman with the landscaping company for two years. He has held several jobs at different locations over the years and has been working steadily since age 12.

[13] Collateral references about his employment were obtained by the probation officer who indicated that his present employer is aware of the charges and that he is a hard worker and a very good employee. At the present time, he earns \$11.75 per hour and works between 40 to 45 hours per week. His supervisor indicated that he was surprised to hear about these charges as he regards Mr. Croft as a "great individual" who is the "best of all of his employees". His supervisor also confirmed that Mr. Croft does not have any issues with alcohol or drugs, but did add that if Mr. Croft were to receive a period of incarceration, he would probably lose his job. Mr. Croft is the sole income earner in the family.

[14] Since the Pre-Sentence Report was prepared, Mr. Croft has now become self-employed and does renovations as a carpenter. He is planning to obtain certification from the Nova Scotia Community College in this trade.

[15] Mr. George McPherson, Mr. Croft's stepfather was contacted by the probation officer and he indicated that Mr. Croft is a very good father, trying to work hard to provide for his family and that he has no issues with drugs or alcohol. However, Mr. McPherson added that Mr. Croft may benefit from anger management due to the lack of a father figure while he was growing up.

[16] In addition, the Defence filed a reference letter from Mr. Dan Bowden, a retired police officer who has known Mr. Croft for two years in a workplace environment. He observed that Mr. Croft is an "honest, caring, polite and hard-working individual" who shows his values at work in his dealings with coworkers and customers. He notes that Mr. Croft adores his son and is a proud and loving father.

[17] Defence counsel acknowledges that Mr. Croft has a prior criminal record as an adult, but his last convictions were entered over nine years ago, in 2004. Mr. Croft acknowledges that he was convicted in October 2004 of a mischief charge contrary to section 430(4) of the **Criminal Code** for which he received a suspended sentence and 12 months on probation. Through counsel, prior to this sentencing, he advised the court that he believes that the assault of a peace officer charge contrary to section 270(1)(a) of the **Criminal Code** was withdrawn or dismissed. However, after raising the issue with counsel prior to delivering this sentencing decision, Mr. Croft stated that he may have been mistaken in that belief and, having considered whether he wished to dispute that conviction, he advised the court that he no longer disputes that assault conviction in 2004.

[18] As both counsel noted, Mr. Croft's only other adult convictions were as an 18-year-old for theft under \$5000 and breach of a **Youth Criminal Justice Act** probation order in January, 2004, for which he received a suspended sentence and period of 18 months on probation. There were prior youth convictions for theft and the mischief/damage to property. Defence counsel observed that most of the convictions occurred during a turbulent period in his life when he was 16 to 18 years of age, needed support and structure in his life, but had none and found himself in trouble with the law. By contrast to that period of time, Defence counsel says that her client is now 29 years old, is in a stable common-law relationship, has a son, a full-time job, has matured and changed his life.

Analysis:

Principles of Sentencing:

[19] The fundamental purpose of sentencing as set out in section 718 of the **Criminal Code** is to ensure respect for the law and the maintenance of a just, peaceful and safe society. The imposition of just sanctions, requires me to consider the sentencing objectives which this sentence should attempt to achieve. In this case, the Crown Attorney submits that the primary sentencing purposes should focus on denunciation of the unlawful conduct, specific deterrence of Mr. Croft and general deterrence of other like-minded individuals.

[20] Defence counsel does not take serious issue with those primary sentencing purposes, but submits that the Court should also consider a sentence that would best assist in rehabilitating the offender. Both counsel submit that the court should also take into account the principle of proportionality found in section 718.1 of the **Criminal Code** and consider any aggravating and mitigating factors as required by

section 718.2 of the **Criminal Code**. Finally, I must also be mindful of the principle of parity as stated in section 718.2 (b) of the **Criminal Code** which requires me to consider that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[21] With respect to other principles of sentencing, Defence counsel submits that I must keep in mind section 718.2(d) and (e) of the **Criminal Code**, which requires the Court to consider all available sanctions other than imprisonment that are reasonable in the circumstances and not to deprive the offender of his liberty if a less restrictive sanction is appropriate in all the circumstances of the case.

[22] In all sentencing decisions, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the specific offender. On this point, the Supreme Court of Canada stated, in **R. v. M.(C.A.)**, [1996] 1 SCR 500 at paragraphs. 91 and 92, that the determination of a just and appropriate sentence requires the trial judge to do a careful balancing of the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while at the same time taking into account the victim or victims and the needs of and the current conditions in the community.

Aggravating and Mitigating Factors:

[23] The Crown Attorney submits that a very serious aggravating factor is that Mr. Croft had possession of a sawed-off rifle, which is a prohibited weapon, knowing that he did not have a license to possess it or a registration certificate for it, and that he kept it in his house where he lived with his common-law partner and their young child. Moreover, it is the position of the Crown that the presence of a

prohibited firearm in the community, which was altered for no lawful purpose, creates a serious risk of injury or even death simply by being available to the offender to be utilized in the community. As such, the Crown submits that the court should regard Mr. Croft's unauthorized possession of this prohibited firearm as an aggravating factor in the sense that deterrence and denunciation of the unlawful conduct must be stressed to reinforce the message that possession of these firearms will not be tolerated and to reflect society's abhorrence for this type of offence. Furthermore, the Crown Attorney adds that it is aggravating that Mr. Croft has a prior criminal record which, although dated, appears to have a prior history for both violence and failure to comply with court orders.

[24] In terms of mitigating factors, Defence counsel submits that I should consider that Mr. Croft has accepted full responsibility for these offences and entered guilty pleas which saved several days of trial. The Crown Attorney acknowledges these points, but submits that Mr. Croft should not get full credit for this mitigating factor as his guilty pleas were entered on the trial date.

[25] Defence counsel also submits that other mitigating factors present in this case are that Mr. Croft is of good character and has strong family support in the community. Although he has only completed grade 10, Mr. Croft has worked steadily since leaving school and is considered to be a good worker. In terms of his prior criminal record, Defence counsel submits that both his adult and youth records are relatively minor and that, prior to this offence, there was a seven-year gap between these charges and his last offences. Furthermore, counsel adds that there have been no recent or related charges while under terms and conditions of his Recognizance.

[26] Defence counsel also submits, as a mitigating factor, that the offences for which Mr. Croft has been sentenced as an adult or a young person under the **Youth Criminal Justice Act** occurred when he was 16-18 years old, immature and lacking any parental direction. Finally, Defence counsel submits that it should be a mitigating factor that the weapon was not used or even present when Mr. Croft committed the offence of assaulting Mr. Hearn, which counsel submits was an impulsive act given her client's belief that Mr. Hearn was stalking his family.

The Appropriate Sentence:

[27] Defence counsel has submitted that it would be appropriate to order Mr. Croft to be subject to the terms of a conditional sentence order. In **R. v. Proulx**, [2000] 1 SCR 61, Chief Justice Lamer said at paragraph 102 that incarceration will usually provide more denunciation than a conditional sentence, but a conditional sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions such as house arrest are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances.

[28] Similar remarks with respect to deterrence were expressed by the Chief Justice in **R. v. Proulx**, *supra*, at para. 107, however, Chief Justice Lamer went on to say that

Nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed.

[29] For a Court to order a conditional sentence order (“CSO”) pursuant to section 742.1 of the **Criminal Code**, the Court must undertake a two-step analysis:

first, to determine whether that order is a sanction that is “available” in all the circumstances of the case, and secondly, if the Court concludes that it is, then the Court is required to determine whether it is an “appropriate” sanction in all of the circumstances of the case.

[30] In this case, at the time that this offence was committed, there was no statutory bar to ordering a “CSO” for this offence and there was no minimum term of imprisonment which would preclude the court from making a conditional sentence order of imprisonment to be served in the community. Furthermore, I find that the section 92(2) **Criminal Code** charge is not a “serious personal injury offence” as defined in section 752 of the **Criminal Code**, and as such, a “CSO” is not precluded from being one of the potential sanctions which could be ordered by the court.

[31] In addition, pursuant to section 742.1 of the **Criminal Code**, the Court is also required to determine whether a conditional sentence order remains an “available” sanction by concluding that the fit and proper sentence in all the circumstances of the case, would not result in a federal term of incarceration or at the other end of the possible sanctions to be imposed, it would not be a fit and proper sentence to suspend the passing sentence and order Mr. Croft to serve a period of time under terms of probation. In all the circumstances of this offence and this offender and having regard to several sentencing precedents for similar offenders who have committed this offence in similar circumstances, I find that a suspended sentence would not be a fit and proper sentence in this case.

[32] Furthermore, based upon the Crown’s recommendation of a sentence of six months and my review of several sentencing precedents for similar offenders who have committed this offence in similar circumstances, I find that there is a wide

range of sentences which have been imposed on offenders which did not involve a federal term of incarceration, that is, a penitentiary sentence of more than two years of imprisonment. As a result, I conclude that a conditional sentence order remains an “available” option in the sentencing of this offender.

[33] Having concluded that a suspended sentence and probation would not be appropriate, nor would a sentence of imprisonment of more than two years in a federal penitentiary, section 742.1 of the **Criminal Code** then requires the Court to conduct a further analysis to determine whether this offender serving a “CSO” in the community would endanger the safety of the community and at the same time, whether it would be consistent with the fundamental purpose and principles of sentencing.

[34] The question then remains whether a conditional sentence order is a fit and proper sentence or whether the circumstances of this offence, the particular circumstances of this offender and the needs of the community to maintain a just, peaceful and safe society require the separation of this offender from society to deter him and other like-minded individuals from committing offences of this nature.

[35] In addition, I must also consider section 718.2(b) of the **Criminal Code** which incorporates the parity sentencing principle to remind judges that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. On this point, I note that it is often difficult to find those similar cases, because the sentencing process is highly individualized and it is based upon the particular circumstances of the offence and the particular offender.

[36] During their submissions, Counsel referred to several cases from Nova Scotia and other jurisdictions to inform the court of a range of sentences ordered in the cases of similar offenders in similar circumstances.

[37] In the case of **R. v. Ayala-Barrios**, [2007] O.J. No. 5393 (Ont. SCJ), a 20-year-old accused with no prior record took a sawed-off shotgun out of the house in response to cries for help from a friend who was being seriously assaulted. The gun was not loaded, the accused did not have any ammunition for it and it was never pointed or used in a threatening fashion. The accused had a difficult upbringing in Guatemala and had a troubled youth after coming to Canada. His life stabilized from age 18 onwards, he was employed on a full-time basis, had strong family support and was the father of twin three-year-olds. He was a youthful first time adult offender with a positive presentence report and no history of alcohol or drug abuse. The Court regarded the offences themselves as aggravating factors as well as the altered nature of the firearm. The Court imposed a 12 month conditional sentence order (“CSO”) followed by 12 months on probation given the unusual circumstances of the case.

[38] In **R. v. Bagnulo**, 2012 ONCJ 815, Mr. Pasquale Bagnulo , a 57 -year-old with a dated criminal record, but with no convictions for any violent offences entered guilty pleas to charges of assault with a weapon, unlawful confinement and possession of a prohibited weapon contrary to section 91(2) of the **Criminal Code**. The case arose in unusual circumstances where the victim entered Mr. Bagnulo’s jewelry store and confronted him about a ring that the victim believed that he had left in the store. The victim grabbed Mr. Bagnulo by the shirt collar and throat and lifted him off the floor. The accused’s son and another employee intervened, took control of the victim, put him in a locked area of the store and called the police. While the victim was locked in that area, the accused pushed him through the

metal bars and the victim punched the accused. The accused responded by discharging pepper spray at the victim for 45 seconds and then the accused entered the locked area and proceeded to kick and punch the victim with the assistance of his son and the other employee. The victim suffered broken ribs, a broken nose, a broken hand and permanent damage to his vision. The victim was off work for a year as a result of the injuries.

[39] Mr. Bagnulo had significant health issues and required daily nursing care for serious injuries resulting from a collision with an impaired driver. One of his legs had been amputated by six inches and the muscles in his legs atrophied so he often had to use a wheelchair and soak in a bath on a nightly basis to avoid blood clots. The accident also caused a catastrophic head injury which had an effect on his cognitive skills. Moreover, the accused was subsequently diagnosed as being bipolar and to have been suffering from a psychiatric condition at the time of the incident.

[40] The Court stated, at paragraph 41, that Mr. Bagnulo's medical condition and mental health issues were mitigating factors which should be taken into consideration. The court held that, given the mental health condition of the accused, general and specific deterrence takes on less importance and that the paramount sentencing principle ought to be the protection of the public which can be more properly accomplished through rehabilitation and treatment rather than punishment. Since a CSO was an available option given the date of the offence, the Court ordered a 12 month CSO for the charge of possession of a prohibited weapon (the bear spray) contrary to section 91(2) of the **Criminal Code** and added a period of three years on probation for the charges of the assault with a weapon and unlawful confinement.

[41] In **R. v. Mathews**, 2011 ABPC 324, the accused had pled guilty to possession of two prohibited weapons [sawed-off shotguns] and two unlicensed high-capacity magazines. The facts of the case were that accused was renting a room in a house which was targeted by a drug investigation. Police seized weapons and ammunition from his room as well as a variety of drugs and weapons from the rest of the house. As the police were conducting their search, the accused drove up to the house and he was arrested. The loaded, sawed-off shotgun was found in his car.

[42] The Crown cited several aggravating factors - the two prohibited weapons which were sawed-off shotguns which were altered for no lawful purpose, the presence of the weapons in proximity to drugs and other weapons and the fact that one of the two shotguns was loaded and was being transported in a car. The Crown submitted that a three-year sentence in penitentiary was the appropriate disposition while the Defence recommended that a CSO was appropriate given the mitigating factors that the accused was 51 years old, had no prior criminal record, there was a very positive presentence report and he had complied with house arrest conditions of release for 2 ½ years without any breaches. In addition, Defence counsel also submitted that the accused had severed all of his ties with his previous associates, expressed genuine remorse and had strong family support.

[43] The Court concluded, after looking at those mitigating factors, at paragraph 33, that “in these exceptional circumstances,” the fundamental principles of sentencing can be properly addressed by a CSO of 660 days to be served in the community, followed by a further period of two years under probation supervision.

[44] Finally, both Counsel referred to **R. v. Patton**, 2010 NSPC 34 where my colleague Judge Campbell imposed a sentence of four months in prison followed

by two years of probation where the accused was convicted of an offence contrary to section 92(1) of the **Criminal Code** for possessing a handgun with its serial number filed down. Police officers located the handgun concealed in a box in the accused's apartment. The accused was a 31-year-old male with ADHD. He had one prior conviction for assault six years earlier. Mitigating factors were that the offender was youthful, steadily employed and did not have any issues with alcohol or drugs. The offender had left school in grade 10 and later completed his GED. As aggravating factors, the court noted the serious nature of the offence and the nature of the firearm itself, that is, it was an illegal handgun that had been modified with the serial number of the firearm being filed off. The firearm was not loaded or concealed on a person.

[45] In **R. v. Patton**, *supra*, the Crown submitted that a sentence of imprisonment of 18 months would meet all of the purposes and principles of sentencing while Defence counsel recommended a fine in the order of \$200 or \$300. Campbell J noted that a conditional sentence was an available option and could certainly express significant deterrence and denunciation, but the issue was whether it could be crafted in such a way to adequately address those concerns. The court noted that the firearm was not a high-powered automatic weapon, it was not involved in the commission of another offence, it was not concealed on his person or present in a crowded bar or on a downtown street, nor was it modified or found loaded. However, after considering all of the circumstances of the offence and the offender as well as the mitigating and aggravating factors, Campbell J imposed a sentence of four months incarceration to be followed by a period of probation for two years together with a 10 year weapons ban under section 109 of the **Criminal Code**.

[46] In many of the cases coming before the Court, Judges often hear (of the all too frequent presence) of unauthorized prohibited weapons in the community and

the serious violence that is associated with these unauthorized or prohibited weapons, especially where they have been altered for no legal or legitimate purpose. As a result, it is important that this court underline a message of specific and general deterrence as well as the denunciation of this unlawful conduct. There can be no doubt that the mere presence of these illegal firearms in our community creates a very dangerous situation which greatly increases the potential for serious injury or death. Therefore, any sentence imposed by the court, in these circumstances, must be sufficiently severe so as to reinforce the message that the illegal possession of firearms in our community will simply not be tolerated.

[47] As I indicated previously, in looking at the parity principle it is often difficult to find similar cases because the sentencing process is so highly individualized and contextual, being based upon the particular circumstances of the offence and the particular offender. I find that the circumstances of this offence and this offender, in many ways, resemble the offender in the case of **Ayala-Barrios** and to some extent the offender in the **R. v. Patton**, *supra* case. In the former case, a CSO of 12 months was ordered, while in the Nova Scotia decision, the Court ordered a four-month term of imprisonment to be followed by a lengthy period of probation.

[48] In this case, like the other sentencing precedents where a CSO was ordered, the offender had either no prior criminal record or a dated record for unrelated matters. Mr. Croft had a troubled youth and most of his prior convictions occurred at a turbulent period of time in his life when he was 16 to 18 years of age. By all accounts, he has matured and there was a gap of seven years between the previous offences as an adult and the incident which led to the charges before the court. In addition, in this case as in other cases where a CSO was ordered, there was a very positive presentence report and strong support from immediate family and friends.

In addition, Mr. Croft has complied with the terms of his Recognizance for almost 2 ½ years, without any incidents of alleged breaches of that court order, which has demonstrated his ability to successfully comply with restrictive court orders. He has accepted full responsibility for his actions and expressed genuine remorse. He has been steadily employed, is the sole supporter of his family including his young son who has special needs. These are all very significant mitigating factors.

[49] Looking at the circumstances of this offence, I find that the possession of the prohibited weapon was not involved in the commission of the offence of assaulting Mr. Hearn, nor was the sawed-off rifle used to threaten Mr. Hearn. Moreover, Mr. Croft did not have the firearm in his vehicle when he drove off on the morning of March 29, 2011 to confront Mr. Hearn. In addition, this is not a case where Mr. Croft concealed the firearm on his person, or in his vehicle, or possessed that firearm on the streets of our community or in any other public place in our community. The facts of this case established that the sawed-off rifle possessed by Mr. Croft was concealed behind a panel in his bedroom which was secured by screws and therefore, the prohibited weapon was not readily accessible. Moreover, the facts of this case also established that there was no ammunition for that rifle in Mr. Croft's house. However, it was established that the sawed-off rifle was a functioning firearm which was fully operational, and as such, the potential for obtaining ammunition and using this firearm or threatening to use this firearm in a lethal manner was real.

[50] In the final analysis, I conclude that the imposition of a sentence of imprisonment to be served in the community under the terms of a conditional sentence order does send a significant message of specific deterrence, general deterrence and denunciation of this unlawful conduct. As Chief Justice Lamer said in **R. v. Proulx**, *supra* at paragraph 102, a conditional sentence can still provide a

significant amount of deterrence and denunciation particularly where onerous conditions such as house arrest are imposed and the sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances. In these circumstances, I am satisfied that the imposition of a 15 month conditional sentence order for the offence contrary to section 92(2) of the **Criminal Code** is consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the **Criminal Code** and at the same time, Mr. Croft serving the sentence in the community would not endanger the safety of the community.

[51] Mr. Croft shall serve that 15 month conditional sentence order on the following basis - the first 9 months will be under strict terms of house arrest and then, during the next 6 months, he will be subject to the terms of a curfew, the terms of which I will outline in a few moments. Following the conditional sentence order, Mr. Croft will be under the terms and conditions of a probation order for an additional 9 months.

[52] In addition to the 15 month conditional sentence order for the possession of the prohibited weapon, Mr. Croft also entered a guilty plea to the offence of assaulting Mr. Hearn, contrary to section 266 of the **Criminal Code**. Given all the circumstances of that offence, which I find to have been planned in the sense that Mr. Croft went looking for Mr. Hearn with the intention of confronting him and then assaulted him, and taking into account the principles of totality and proportionality and the fact that I have just ordered a 15 month CSO, I hereby order Mr. Croft to serve a 10 day CSO concurrently with the 15 month CSO that I have just ordered on the section 92(2) **Criminal Code** offence.

[53] Finally, I am also granting the ancillary orders sought by the Crown and will sign an order under section 487.051 of the **Criminal Code** which will require Mr. Croft to provide a sample of his DNA, as the assault charge contrary to section 266 of the **Criminal Code** and the possession of the prohibited weapon contrary to section 92(2) of the **Criminal Code** are both secondary designated offences for the purpose of taking bodily substances for forensic DNA analysis. I will also sign the section 109 **Criminal Code** firearms' prohibition order which was sought by the Crown for a period of ten (10) years as well as the forfeiture of the sawed-off rifle pursuant to section 491(1) of the **Criminal Code**.

Order Accordingly

Dated at Dartmouth on August 27, 2013

Theodore Tax

Judge of the Provincial Court